IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

1. Surendra Kumar & Others Vs. State of Rajasthan
(D.B. CRIMINAL APPEAL NO.605/2001)

2. State of Rajasthan Vs. Gopal Das & Others
(D.B. CRIMINAL APPEAL NO.164/2002)

D.B. Criminal Appeals under Sec.374(2) Cr.P.C. against the judgment dated 24-8-2001 in Sessions Case No.59/2001 passed by Sh. Giriraj Prasad Gupta, RHJS, Additional Sessions Judge (Fast Track) No.1 Jaipur City.

Date of Judgment: January 17, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA
HON'BLE MR. JUSTICE R.S.CHAUHAN

Mr. Arvind Kumar Gupta] for the appellants.
Mr.Bhanwar Lal Sharma]
Mr. Rinesh Gupta]
Mrs.Alka Bhatnagar]

Mr. M.L.Goyal, Public Prosecutor for the State.
Mr. A.K.Bhandari, for the complainant.

BY THE COURT:(PER HON'BLE Shiv Kumar Sharma,J.)

Surendra Kumar, Rajesh Kumar and Pappu @ Prakash, the appellants herein, along with Gopal Das were put to trial before learned Additional Sessions Judge (Fast Track) No.1 Jaipur City in Sessions Case No.59/2001, who vide judgment dated August 24, 2001 convicted and sentenced the appellants as under:-

Surendra Kumar:
U/s.302 IPC:
To suffer life imprisonment and fine of Rs.1000/-, in default to further suffer three months simple imprisonment.

U/s.324 IPC:

To suffer rigorous imprisonment for one year and fine of Rs.1000/-, in default to further suffer three months rigorous imprisonment.

U/s.4/25 Arms Act:

To suffer rigorous imprisonment one year and fine of Rs.1000/-, in default to further suffer three months simple imprisonment.

Rajesh Kumar:

U/s.302/34 IPC:

To suffer life imprisonment and fine of Rs.1000/-, in default to further suffer three months simple imprisonment.

U/s.324/34 IPC:

To suffer rigorous imprisonment for one year and fine of Rs.1000/-, in default to further suffer three months rigorous imprisonment.

Pappu @ Prakash:

U/s.302 IPC:

To suffer life imprisonment and fine of Rs.1000/-, in default to further suffer three months simple imprisonment.

U/s.324/34 IPC:

To suffer rigorous imprisonment for one year and fine of Rs.1000/-, in default to further suffer three months rigorous imprisonment.

U/s.4/25 Arms Act:

To suffer rigorous imprisonment one year and fine of Rs.1000/-, in default to further suffer three months simple imprisonment.

Sentences were ordered to run concurrently.

Learned trial Judge however acquitted co-accused Gopal Das. Assailing the finding of acquittal the State of Rajasthan filed appeal No.164/2002.

2. The brief facts as unraveled by the prosecution at the trial are as follows:-

On October 1, 1995 at 1.00 PM, Vishambhar Dayal (Pw.7), Sub Inspector of Police Station Ramganj Jaipur recorded parcha bayan (Ex.P-1) of Hemendra (Pw.1) wherein he stated that on the said day around 11.30 AM a boy of his colony informed him that some persons were quarreling with his brother Tara Chand near Gandhi Circle. On reaching near Bhomiyaji temple he saw Pappu and Sethi @ Surendra armed with knives and they were inflicting injuries to his brother Nemichand. Gopal, Rajesh, Gulab, Kishore Master, Govind, Sanjay, Padam and Mahesh having sticks in their hands, were also there. When the informant made attempt to intervene Surendra @ Sethi caused injury on his left shoulder with knife. His brother Tara Chand was also beaten up. Cause of incident was known only to Tara Chand. While the informant and Nemi Chand were lying in an injured condition in front of the house of Gopal, police lifted them and removed them to the hospital. At the time of incident Gopal, Shakuntala, Pooran, Rakesh and many others got assembled. On that parcha bayan a case under sections 147, 148, 149 and 307 IPC was registered and investigation commenced. Subsequently on the death of Nemi Chand Section 302 IPC was added. Post mortem on the dead body was performed, necessary memos were drawn, statements of witnesses were recorded, the accused were arrested and on completion of investigation charge sheet was filed. In due course the case came up for trial before the learned Additional Sessions Judge (Fast Track) No.1 Jaipur City. Charges under sections 323, 324, 307, 302 and 34 IPC and 4/25 Arms Act were framed. The accused denied the charges and claimed trial. In support of its case the prosecution examined as many as 18 witnesses. In the explanation

under section 313 Cr.P.C., the accused claimed innocence. Two witnesses in defence were examined. Learned trial Judge on hearing final submissions convicted and sentenced the appellants as indicated herein above.

3. Having scanned the material on record we find that the death of Nemichand was homicidal in nature. As per postmortem report (Ex.P-29) following ante mortem injuries were found on the dead body:-

> 1. Incised wound of size 1cm x ½cm muscle deep placed traversly over front of left arm over 1/3 2cm above elbow fresh clotted blood and muscular hematoma.
> 2. Incised wound of size 4cm x ¾cm placed transversly over left gluteal region upper oradametus outer part and tailing out ward fresh clotted blood over muscles hematoma present
> 3. Stab incised wound of triangular shaped of size 2cm x ½cm x bone deep on dissection there is cutting of muscular placed transversely oblique over back of left gluetal region near sacero iliac joint and reaching upto bone of sacurem. Further its not seen and extravation blood and 6 x 4cm hematoma formation is present.
> 4. Stab incised wound of size 2cm oval shaped area. Both corner and spindal and placed obliquely just below (Rt.) costal margin. It is ¾cm width and 25cm below.mid clavicular line and 3cm (Rt.) side to mid line area margin are clear cut regular margin and going down ward, medially and muscles fiber are cut further not seen except contusion of external surface of peritoneum underneath tissue staining is present fresh clotted and hematoma formation in an 4 x 3½ area of muscles.
> 5. Incised wound of size 2cm x 1cm over chin under surface, the muscles are cut and margins are clean and clotted blood placed trans obliquely and spindal shaped.
> 6. Abrasion 1 x 1cm over (Rt.) iliac crest anter part red with tissue standing present.
> 7. Abrasion 1 x ½cm over back of (Rt.) elbow medially red.
> 8. Abrasion ½ x ½cm medial surface left leg upper 1/3 red
> 9. Abrasion 2 x 1cm to 1 x ½cm upper part left knee point upper and ½ x ¼cm lower part antero medially red.
> 10. Abrasion 1 x ¼cm over left leg lateral upper 1/3 red.
> 11. Abrasion 1 x 1cm (Rt.) leg laterally red.
> 12. Abrasion 1 x ½cm back of (Rt.) super scapular region, medially

part red and 1 x ½cm back of (Rt.) shoulder red

13. Stab incised wound of size 2½cm x 1cm x ?chest cavity deep placed obliquely over (Rt.) side front of chest 5cm below medeal end of clavicle and 2cm anter to mid sternal line in 2nd Inter costal space medial part its going through and through. Inter costal space muscle and cutting thereby when it is 2½ x ¾cm size and then going downward and medially with cutting of plura underneath the plural cavity on (Rt.) side containing about 1800 cc blood mixed with plural fluid and further examination of lungs there is stab wound of size 2 x 1cm x through and through medial border of (Rt.) Upp.lobe.and it 1cm lateral to border placed obliquely when upto 1½ cm deep and further there stab incised wound of 2 x 1cm over (Rt.) side pericardium and then extravation of blood in medial sternum and around pericardium and hemoparicardium about 800cc further examination of heart there is stab wound of 1 x ¼cm x through and through (Rt.) atrium appndigen and cavity is exposed. There is also cutting of (Rt.) surface of ascending part of arota of size 2½cm x 1/8 cm through the cavity is exposed. Further wound is not seen over aorta. On examination of posterior surface of pericardium there small ¼ x ¼ cm cut and further wound is not seen, and the wound's margin are clean cut regular well defined. The total depth 4½ cm deep and elliptical (spinal shaped) on external surface.

14. Abrasion, three in number ½ x ½ cm each back of left elbow and laterally red.

Dr. Y.N.Verma (Pw.17) who conducted autopsy on the dead body deposed that the cause of death was shock brought about as a result of injuries to lung, heart and aorta.

4. As per injury report (Ex.P-30) informant Hemendra received one incised wound measuring 2 x 1cm on Lt. shoulder posterior lateral aspect deep with fresh clotted blood obliquely placed.

However on X-ray no bony injury was found.

5. In assailing the impugned judgment learned counsel for the appellants urged following points:-

(i) Time of recording parcha bayan (Ex.P-1) could not be

known, since it was not mentioned. Parcha bayan was allegedly sent through Ram Pal Constable, from the hospital to police station but Ram Pal was not examined at the trial.

(ii) The FIR reached to the Ilaqua Magistrate after a great delay and delay was not explained.

(iii) As per the testimony of Gopal, he informed the police about the incident and police noted down the report. The said report was not placed on record by the police.

(iv) Statements of witnesses consist material contradictions that go to the root of the case.

6. Per contra, learned Public Prosecutor and learned counsel for the complainant supported the conviction of appellants. It is canvassed that since Hemendra (Pw.1) was the injured eye witness, he was rightly relied upon. It is further contended that the infirmities pointed out by learned counsel for the appellants do not affect the substratum of the case. The acquittal of co-accused Gopal Das has also been assailed on the ground that there was consistent evidence against him. Learned counsel took us through the statements of witnesses and other material on record.

7. Factual situation emerges from the material on record may be summarised thus:-

(i) Bishambhar Dayal (Pw.7), who took injured Nemichand and Hemendra from police station to Hospital and recorded Parcha Bayan of Hemendra, did not mention time of recording parcha

bayan. He deposed:

"पर्चा बयान लिखने का, खत्म करने का समय दर्ज नहीं किया।"

He further deposed:

"एस. एच. ओ. साहब 1.30 बजे के करीब आ गए थे।"

(ii) Chhagan Lal (Pw.15), SHO Police Station Ramganj, on the other hand stated that on receiving telephonic message at 11.45 AM he rushed to the spot and from the spot he directed Bishambhar Dayal SI to take the injured Nemichand and Hemendra to the Hospital. He further deposed thus:-

"यह सही है कि वह घटना औरतों की छेड़छाड़ करने के कारण घटित होना मुझे घटना स्थल पर मालुम हुआ था।"

In his cross examination he further stated as under:-

"यह सही है कि ताराचन्द के साथ भी मारपीट हुई थी। चोटग्रस्त ताराचन्द ने यह बताया था कि उसने शराब के नशे मे सूरज के घर पर जाकर महिलाओं से छेड़छाड़ की जिसके कारण पप्पू वगैरहा ने उसके साथ मारपीट की।..."

"...यह सही है कि सूरज को भी घटना में चोटें आई थी और मैंने डाक्टरी मुआयना करवाया था। सूरज भी घटना स्थल पर मुझे मिला था..."

" ... यह सही है कि मैने जांच में मृतक नेमीचन्द को केवल अभियुक्त पप्पू उर्फ प्रकाश के द्वारा ही चोट मारना पाया था और अन्य किसी अभियुक्त द्वारा चोट मारना नहीं पाया था।"

(iii) Constable Ram Karan (Pw.3) stated that Parcha Bayan (Ex.P-1) was handed over to him by Chhagan Lal SHO at Hospital:-

"मुझे पर्चा बयान अस्पताल पर छगनलाल जी एस. एच. ओ. और किशन लाल भी मौजूद थे तब दिया था..."

(iv) According to Gopal (Pw.2) he lodged the report at the spot which was noted down by the police and on the report he and Shakuntala put signatures:-

"यह सही है कि मैने व मेरी बेटी शकुन्तला ने रिपोर्ट पुलिस वालों को घटना की लिखाई थी। जब पुलिस करीब दस मिनट बाद आई तभी रिपोर्ट लिखाई थी। मैंने और शकुन्तला ने उस रिपोर्ट पर हस्ताक्षर किए थे।"

(v) Lallu Lal (Pw.8) stated as under:-

"मैं घटना स्थल से 5-10 मिनट मे थाने पर पहुंच गया। मैं जैसे ही थाने पर पहुंचा वहां रिपोर्ट करनी चाही तो सभी ने मुझे कह दिया कि तुम अपने लड़के को अस्पताल में जाकर संभालो। रिपोर्ट हो चुकी है।"

(vi) Suraj (Pw.13) stated that he was detained in the police station for five seven days:-

"पुलिस ने मुझे पांच सात दिन तक थाने में बिठाये रखा और घर नहीं आने दिया। थाने वालों ने मुझे रोके रखा था क्यों रोके रखा यह नहीं बताया। यह कहना गलत है कि थाने वालों ने मुझे इसलिए बिठाये रखा हो कि नेमीचन्द को मैंने चाकू मारा हो।..."
"...मेरे चोटें आई थी जो पुलिस जब ले गई तब भीडभाड़ में आई थी। डाक्टरी मुआयना मेरा हुआ था।..."

vii) Report entered in the Rojnamcha (Ex.P-17A) at 11.45 AM on October 1, 1995 reads as under:-

"इस वक्त मजरूब श्री हेमेन्द्र पुत्र श्री लल्लू लाल तथा नेमीचन्द पुत्र लल्लू लाल मय श्री हेमन्त पुत्र राम नारायण निवासी हरिजन बस्ती हीदा की मोरी जयपुर हाजिर थाना आए। जिनमें मजरूब हेमन्त ने बताया कि हरिजन बस्ती में झगड़ा हो गया जिसमें हेमेन्द्र तथा नेमीचन्द के ज्यादा चोट लगी है..."

A look at the report goes to show that Hemendra and Nemichand did not inform the police as to who were the assailants.
(viii) A perusal at FIR (Ex.P-5) demonstrates that it had reached to the Ilaqua Magistrate on October 4,1995 at 2 PM.

8. Conjoint reading of the statements of Suraj (Pw.13), Lallu Lal (Pw.8), Ram Karan (Pw.3), Gopal (Pw.2), Chhagan Lal SHO (Pw.15), Hemendra (Pw.1) and Bishambhar Dayal (Pw.7) demonstrates that origin and genesis of the incident has been withheld by the prosecution. There are certain questions which remained unanswered. They are:-

(a) Where is that written report which was lodged by Gopal (Pw.2) at the spot and signed by Gopal and Shakuntala?
(b) If names of assailants were disclosed by Hemendra (Pw.1) in the parcha bayan, why Suraj (Pw.13) was taken in custody and detained in the police station?
(c) Under what circumstances Suraj (Pw.13) sustained injuries?
(d) When Hemendra and Nemi Chand had gone to the police station immediately after the incident why in the Report entered in the Rojnamcha, names of assailants were not entered?
(e) Why the police refused to write the report of Lallu Lal (Pw.8).

9. Indisputably the FIR reached to the Ilaqua Magistrate after three days and there is nothing on record to explain as to why the delay was caused. In the facts and circumstances of the case the possibility that FIR was brought into existence long after the occurrence, cannot be ruled out.

10. It is well settled that the object of insisting upon prompt lodging of FIR is to obtain early information of offence, circumstances leading to it, the names of the culprit, part played by each and names of eye witnesses. Delay may result in introduction of after-thought, coloured and exaggerated

version.

11. In Bijoy Singh v. State of Bihar (2002)9 SCC 147 their Lordships of Supreme Court explained the scope of Section 157 CrPC thus:-

(para 7)

> "Sending the copy of the special report to the Magistrate as required under section 157 of the Criminal Procedure Code is the only external check on the working of the police agency, imposed by law which is required to be strictly followed. The delay in sending the copy of the FIR may by itself not render the whole of the case of the prosecution as doubtful but shall put the court on guard to find out as to whether the version as stated in the court was the same version as earlier reported in the FIR or was the result of deliberations involving some other persons who were actually not involved in the commission of the crime. Immediate sending of the report mentioned in Section 157 CrPC is the mandate of law. Delay wherever found is required to be explained by the prosecution. If the delay is reasonably explained, no adverse inference can be drawn but failure to explain the delay would require the court to minutely examine the prosecution version for ensuring itself as to whether any innocent person has been implicated in the crime or not. Insisting upon the accused to seek an explanation of the delay is not the requirement of law. It is always for the prosecution to explain such a delay and if tendered, no adverse inference can be drawn against it."
>
> (Emphasis supplied)

12. In Suresh Chaudhary v. State of Bihar (2003)4 SCC 128 the Supreme Court observed as under:-

> "... That apart, the express message which PW.13 sent to the Jurisdictional Magistrate reached the said Magistrate at his place only on 12-10-1992 nearly 1,1/2 days after the said complaint was registered and we find no explanation from PW.13 as to this inordinate delay which only adds to the doubtful circumstances surrounding the prosecution case."

13. In Alla China Vs. State of A.P. (2002)8 SCC 440 it was held that if any delay is caused in sending the FIR to the Magistrate, which the prosecution fails to explain by furnishing reasonable explanation, ipso facto the same cannot be taken to be a ground for throwing out the prosecution case if the same is otherwise trustworthy upon appreciation of evidence which is found to be credible. However, if it is otherwise, an adverse inference may be drawn against the prosecution. In Anil Rai Vs. State of Bihar (2001)7 SCC 318 it was indicated that where the FIR is shown to have actually been recorded without delay and investigation started on the basis of the FIR, delay in sending the copy of the report to the Magistrate cannot by itself justify the conclusion that the investigation was tainted and the prosecution insupportable.

14. In the instant case as already noticed, the incident occurred after Tara Chand outraged the modesty of women closely related to Suraj (Pw.13). Suraj himself sustained injuries and he was found by Chaggan Lal SHO at the place of incident. Suraj was detained in the police station for about five days. In these circumstances this possibility cannot be ruled out that Suraj was involved in the incident. Looking to the contradictions in the statements of Chhagan Lal SHO, Ram Karan and Bishambhar Dayal we find that Parcha Bayan of Hemendra came into existence, much after the incident. Upon appreciation of evidence we do not find the testimony of Hemendra as trustworthy. It appears to us that Hemendra, Suraj and Nemi Chand received injuries in a melee. Testimony of Chhagan Lal SHO stood completely shattered in the cross examination. Having undertaken complete and comprehensive appreciation of all vital features of the case and the entire evidence with reference to broad and reasonable probabilities, we are of the view that prosecution has failed to establish charges against appellants

beyond reasonable doubt. Learned trial Judge did not properly appreciate the evidence and the infirmities as discussed herein above escape notice of learned trial Judge.

15. For these reasons, we dispose of instant matters in the following terms:-

(i) We allow the appeal of appellants Surendra Kumar, Rajesh Kumar and Pappu @ Prakash and set aside the impugned judgment dated August 24, 2001 of the learned Additional Sessions Judge (Fast Track) No.1, Jaipur City and acquit the appellants of the respective charges framed against them under sections 302, 302/34, 324, 324/34 IPC and 4/25 Arms Act. The appellant Rajesh Kumar is on bail, he need not surrender and his bail bonds stand discharged. The appellants Surendra Kumar and Pappu @ Prakash, who are in jail, shall be set at liberty forthwith, if not required to be detained, in any other case.

(ii) We find no merit in the appeal preferred by the State of Rajasthan and it stands accordingly dismissed.

(R.S.Chauhan),J. (Shiv Kumar Sharma)J.

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